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Defendant

Douglas E. Palermo

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Case No. 05-25081

In re:

Chapter 7

DOUGLAS E. PALERMO,

Debtor.

DOUBET, LLC,

Adv. Pro. No. 06-08285 (ASH)

Plaintiff,

v.

DOUGLAS E. PALERMO,

Defendant.

**STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL**

Douglas E. Palermo (“Palermo”), debtor in the above-captioned Chapter 7 proceeding and defendant in the above-captioned adversary proceeding, by and through his attorneys Cole, Schotz, Meisel, Forman & Leonard, P.A. respectfully submits the following Statement of Issues and Designation of Record with respect to his appeal from the Decision of the United States Bankruptcy Court for the Southern District of New York, dated and entered on July 9, 2007 and the Order and Judgment dated and entered on July 16, 2007 (collectively, the “Appealed Order”)

denying Mr. Palermo's discharge pursuant to Sections 727(a)(2), (3) and (5) of the Bankruptcy Code, 11 U.S.C. §§ 727(a)(2), (3) and (5):

**STATEMENT OF ISSUES ON APPEAL**

1. Whether the Bankruptcy Court's findings of fact were clearly erroneous based on, among other grounds, the Court's rejection of stipulated facts set forth in the Bankruptcy Court's pre-trial Order, the Court's making of findings without evidentiary support in the record and the Court's making of findings contrary to the evidence in the record?
2. Whether the Bankruptcy Court erred by admitting into evidence and relying upon purported summaries of various records prepared by Plaintiff's representative despite the summaries being inaccurate and misleading?
3. Whether the Bankruptcy Court erred in denying Palermo's discharge pursuant to 11 U.S.C. § 727(a)(2) and finding that he intended to hinder his creditors by transferring and concealing his property into the pre-petition year?
4. Whether the Bankruptcy Court erred in denying Palermo's discharge pursuant to 11 U.S.C. § 727(a)(3) and finding that Palermo concealed information and failed to preserve records from which his financial condition could be ascertained?
5. Whether the Bankruptcy Court erred in denying Palermo's discharge pursuant to 11 U.S.C. § 727(a)(5) and finding that Palermo failed to satisfactorily explain the disposition of assets?
6. Whether the Bankruptcy Court erred in applying the "continuing concealment doctrine" without identifying any transfer of property by Palermo that occurred more one year prior to his bankruptcy petition in which Palermo maintained an equitable or beneficial interest into the one year prior to his bankruptcy petition?

7. Whether the Bankruptcy Court erred as a matter of law by concluding that loans obtained by Palermo secured by future service income constituted a scheme to defraud creditors?

8. Whether the Bankruptcy Court erred as a matter of fact and law by finding that Palermo's failure to disclose future, unknown transactions to one of his creditors demonstrated the requisite intent to deny his discharge pursuant to 11 U.S.C. § 727(a)(2)?

9. Whether the Bankruptcy Court erred as a matter of law in finding that a certain New York State Court restraining notice, served in February 2003, precluded payment of certain fees due to Palermo or certain entities with which he was affiliated?

10. Whether the Bankruptcy Court erred as a matter of fact and law in finding that certain loans Palermo received were entered into to avoid certain restraining notices?

11. Whether the Bankruptcy Court erred by concluding that 455 CPW, LLC was "willing to evade the restraining notices" without (1) first determining the validity of the restraining notices; (2) hearing any evidence with respect to 455 CPW, LLC's intentions; and (3) precluding Palermo from offering evidence on this point?

12. Whether the Bankruptcy Court erred by finding that there was "no evidence" to support Palermo's claim that the closing of the transaction known as "River East," that occurred post-petition, was the result of post-petition services rendered by Palermo?

13. Whether a contract for personal services is an executory contract subject to assumption by a Chapter 7 trustee of an individual debtor?

14. Whether a contract for personal services that requires an individual debtor to perform future services is property of a Chapter 7 debtor's estate?

15. Whether the Bankruptcy Court erred as a matter of law in concluding that a fee for personal services contingent upon the closing of a particular transaction is nevertheless earned by the individual debtor some time prior to the closing of the transaction at issue?

**DESIGNATION OF RECORD ON APPEAL**

Palermo submits the following designation of items to be included in the record of this appeal:

1. Complaint of Doubet, LLC (“Doubet”) against Palermo (Docket No. 1)
2. Answer to Complaint (Docket No. 7)
3. Joint Pre-Trial Order (without exhibits)(Docket No. 29)
4. Exhibit A to Joint Pre-Trial Order – Statement of Undisputed Facts (Docket No. 29)
5. So Ordered Stipulation Regarding Admissibility into Evidence of Certain Deposition Transcripts (Docket No. 32)
6. Transcript of Trial for March 12, 2007 (Docket No. 33)
7. Transcript of Trial for March 13, 2007 (Docket No. 34)
8. Transcript of Trial for March 14, 2007 (Docket No. 35)
9. Plaintiff’s Trial Exhibit 1 – Proof of Claim (Not docketed)
10. Plaintiff’s Trial Exhibit 2 – Statements and Schedules (Not docketed)
11. Plaintiff’s Trial Exhibit 3 – Series of status reports on standing of Palermo entities (Not docketed)
12. Plaintiff’s Trial Exhibit 4 – Palermo’s answers to interrogatories in connection with information subpoena (Not docketed)
13. Plaintiff’s Trial Exhibit 5 – Judgment of Morris Silver against Palermo (Not docketed)
14. Plaintiff’s Trial Exhibit 6 – Additional judgment of Morris Silver against Palermo (Not docketed)
15. Plaintiff’s Trial Exhibit 7 – Additional judgment of Morris Silver against Palermo (Not docketed)
16. Plaintiff’s Trial Exhibit 8 - Palermo affidavit dated 4/22/94 (Not docketed)
17. Plaintiff’s Trial Exhibit 15 - Restraining notices (Not docketed)
18. Plaintiff’s Trial Exhibit 16 - Restraining notices (Not docketed)

19. Plaintiff's Trial Exhibit 17 - Order to show cause seeking to vacate restraining notice (Not docketed)
20. Plaintiff's Trial Exhibit 18 - Notice of motion seeking to vacate restraining notice (Not docketed)
21. Plaintiff's Trial Exhibit 19 – New York State Supreme Court decision on McGuire Woods motion (Not docketed)
22. Plaintiff's Trial Exhibit 20 - Letter from Columbia University (Not docketed)
23. Plaintiff's Trial Exhibit 21 - Settlement agreement entered into with Mr. Hourihan (Not docketed)
24. Plaintiff's Trial Exhibit 22 – Motion filed by Mr. Palermo seeking to vacate judgment dated 10/19/90 (Not docketed)
25. Plaintiff's Trial Exhibit 23 - Stipulation with Palermo's counsel to refrain from collection proceedings during pendency of motion to vacate judgment (Not docketed)
26. Plaintiff's Trial Exhibit 24 - Decision by Justice Covello denying Mr. Palermo's motion to vacate 10/9/90 judgment (Not docketed)
27. Plaintiff's Trial Exhibit 25 – New York State Supreme Court decision extending effectiveness of restraining notice (Not docketed)
28. Plaintiff's Trial Exhibit 26 - Second New York State Court decision by Justice Brennan extending effectiveness of restraining notice (Not docketed)
29. Plaintiff's Trial Exhibit 27 - Companion copy of Court decision extending restraining notice (Not docketed)
30. Plaintiff's Trial Exhibit 28 – Cover letter to Donald Horowitz with attachments (Not docketed)
31. Plaintiff's Trial Exhibit 29 – Separation Agreement between Palermo and his Marilyn Hutchings(Not docketed)
32. Plaintiff's Trial Exhibit 30 – Palermo's Financial Affidavit (Not docketed)
33. Plaintiff's Trial Exhibit 31 - Marilyn Hutchings bank statement (Not docketed)
34. Plaintiff's Trial Exhibit 32 – Advisory Services Agreements (Not docketed)
35. Plaintiff's Trial Exhibit 33 – Advisory Services Agreements (Not docketed)
36. Plaintiff's Trial Exhibit 34 – Assignment to serve as irrevocable assignment between Beekman Street Advisory Corp and D. Palermo

37. Plaintiff's Trial Exhibit 37 – Advisory Agreement Restated Second Amendment (Not docketed)
38. Plaintiff's Trial Exhibit 38 – Fax from Palermo to McLean (Not docketed)
39. Plaintiff's Trial Exhibit 39 – Assignment to serve as irrevocable assignment between Beekman Street Advisory Corp and D. Palermo (Not docketed)
40. Plaintiff's Trial Exhibit 40 – Various checks paid to Mr. Palermo in 2002 (Not docketed)
41. Plaintiff's Trial Exhibit 41 – Various checks paid to Mr. Palermo in 2002 (Not docketed)
42. Plaintiff's Trial Exhibit 42 – Various checks paid to Mr. Palermo in 2002 (Not docketed)
43. Plaintiff's Trial Exhibit 43 - Various checks paid to Mr. Palermo in 2002 (Not docketed)
44. Plaintiff's Trial Exhibit 44 – Letter from McLean to Trustees of Columbia University (Not docketed)
45. Plaintiff's Trial Exhibit 45 – SB Housing Enhancement L.L.C. Payment to Palermo or designated payees (Not docketed)
46. Plaintiff's Trial Exhibit 46 – Letter from McLean to Norfolk Financial (Not docketed)
47. Plaintiff's Trial Exhibit 47 – Agreement between Palermo and Korff re Boston property purchase (Not docketed)
48. Plaintiff's Trial Exhibit 48 – Letter from McLean to River East (Not docketed)
49. Plaintiff's Trial Exhibit 49 – Journal Entries – MCL Management Corp. (Not docketed)
50. Plaintiff's Trial Exhibit 50 – Fax from Palermo to McLean (Not docketed)
51. Plaintiff's Trial Exhibit 51 – Argus Asset Management Bank Statement (Not docketed)
52. Plaintiff's Trial Exhibit 52 – E-mails dated 2/6/06 (Not docketed)
53. Plaintiff's Trial Exhibit 53 – Funds Transfer Search Report (Not docketed)
54. Plaintiff's Trial Exhibit 54 – E-mails dated 10/25/06 and 10/27/06 (Not docketed)
55. Plaintiff's Trial Exhibit 55 – Fax from B. Farley to D. Palermo (Not docketed)

56. Plaintiff's Trial Exhibit 56 – Copy of Agreement from J. Korff to D. Palermo (Not docketed)
57. Plaintiff's Trial Exhibit 57 – Copy of Agreement (Not docketed)
58. Plaintiff's Trial Exhibit 58 – Fleet Bank Statement of Argus Asset Management (Not docketed)
59. Plaintiff's Trial Exhibit 59 – Transcript of Deposition of Douglas Palermo dated 3/16/06 (Not docketed)
60. Plaintiff's Trial Exhibit 60 – Demonstrative Exhibit: Columbia/455 CPW Transaction (Not docketed)
61. Plaintiff's Trial Exhibit 61 – Demonstrative Exhibit: Payments from 455 Transaction (Not docketed)
62. Plaintiff's Trial Exhibit 62 – Demonstrative Exhibit: Butterfield Trust Receipts and Disbursements (Not docketed)
63. Plaintiff's Trial Exhibit 63 – Demonstrative Exhibit: Payments from other MCL Entities (Not docketed)
64. Plaintiff's Trial Exhibit 65 – Demonstrative Exhibit: School Expenses(Not docketed)
65. Plaintiff's Trial Exhibit 66 – Demonstrative Exhibit: Club Expenses(Not docketed)
66. Plaintiff's Trial Exhibit 67 – Demonstrative Exhibit: Marilyn Hutchings Expenses (Not docketed)
67. Plaintiff's Trial Exhibit 68 – Demonstrative Exhibit: Loans and Advances(Not docketed)
68. Plaintiff's Trial Exhibit 69 – Demonstrative Exhibit: Uncategorized Income (Not docketed)
69. Plaintiff's Trial Exhibit 70 – Demonstrative Exhibit: Palermo/Columbia Analysis of Advisory Services Agreements (Not docketed)
70. Plaintiff's Trial Exhibit 71 - Video recording of portion of deposition of Douglas Palermo dated 3/16/06 (Not docketed)
71. Plaintiff's Trial Exhibit 72 – Production Number P0010614 (Not docketed)
72. Plaintiff's Trial Exhibit 74 - Production Number P0010627 (Not docketed)
73. Plaintiff's Trial Exhibit 75 - Production Number P0010628 (Not docketed)

74. Plaintiff's Trial Exhibit 76 - Production Number P0010530 (Not docketed)
75. Plaintiff's Trial Exhibit 77 - Production Number P0010491 (Not docketed)
76. Defendant's Deemed Trial Exhibit A – Underlying financial books and records that provided the raw data for Silver's database (Not docketed)
77. Defendant's Trial Exhibit B – Transcript of Silver's Deposition (Not docketed)
78. Defendant's Trial Exhibit C – Letter from Silver to Ms. Pan at HSBC (Not docketed)
79. Defendant's Trial Exhibit E – Recording and transcript of telephone conversation between Morris Silver and Douglas Palermo (Docket No. 38 (transcript only))
80. Deposition Transcript of David Buchanan (Not docketed)
81. Deposition Transcript of William Chipman (Not docketed)
82. Deposition Transcript of Candee Chusid (Not docketed)
83. Deposition Transcript of Thomas Farley (Not docketed)
84. Deposition Transcript of Stephen Field (Not docketed)
85. Deposition Transcript of John Hourihan (Not docketed)
86. Deposition Transcript of Marilyn Hutchings (Not docketed)
87. Deposition Transcript of Joseph Korff (Not docketed)
88. Deposition Transcript of Jay Landesman (Not docketed)
89. Deposition Transcript of Daniel McLean (Not docketed)
90. Deposition Transcript of James Sligar (Not docketed)
91. Deposition Transcript of William Scott (Not docketed)
92. Deposition Transcript of Douglas Spenst (Not docketed)
93. Plaintiff's Proposed Findings of Fact (Docket No. 36)
94. Defendant's Proposed Findings of Fact and Conclusions of Law (Docket No. 37)
95. Plaintiff's Reply Proposed Findings of Fact (Docket No. 40)

96. Written Opinion of Judge Hardin denying Palermo's discharge dated 7/9/07 (Docket No. 41)
97. Order and Judgment dated 7/16/07 (Docket No. 43)
98. Amended Notice of Appeal dated 7/19/07 (Docket No. 45)

Dated: New York, New York  
July 30, 2007

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By:/s/ Laurence May

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